

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **April 9, 2002**

AGENDA ITEM NO.: 22

CONSENT:

REGULAR: **X**

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: Public Hearing Regarding A Month-To-Month Lease Agreement With Air Midwest Airlines To Operate Scheduled Airline Service At Lynchburg Regional Airport

RECOMMENDATION:

Approve a month-to-month lease agreement with Air Midwest Airlines to operate scheduled airline service at Lynchburg Regional Airport.

SUMMARY:

Please see the attached proposed lease agreement between the City and Air Midwest Airlines.

In February 2001, officials at US Airways affiliate Mesa Airlines informed airport staff that Lynchburg's existing Charlotte carrier, Mesa-owned CCAir, would be replaced on March 1, 2002 by another Mesa-owned carrier, Air Midwest. Currently, Air Midwest is operating under an interim lease agreement and offers five daily departures to Charlotte on 19-seat, Beech 1900D aircraft. Total daily departures and seat capacity remained unchanged from that offered previously by CCAir.

At the end of December 2000, the City of Lynchburg extended current agreements with the airport's other airlines on a month-to-month basis pending determination of new airline rates and charges and the preparation of a new base operating agreement. The proposed lease with Air Midwest remains consistent with the agreements currently in force with the other airlines, and will be offered on the same month-to-month basis.

PRIOR ACTION(S): N/A

BUDGET IMPACT: None

CONTACT(S):

Mark F. Courtney 582-1150/222

ATTACHMENT(S):

➤ Draft Lease Agreement

REVIEWED BY:

RESOLUTION

BE IT RESOLVED That the Lynchburg City Council hereby approves the month-to-month lease agreement between the City and Air Midwest Airlines to operate scheduled airline service at Lynchburg Regional Airport; and

BE IT FURTHER RESOLVED That the City Manager is authorized to sign the lease agreement on behalf of the City.

Adopted:

Certified:

Clerk of Council

069L

**LYNCHBURG REGIONAL AIRPORT
AIRLINE AIRFIELD AND TERMINAL OPERATING AGREEMENT**

CITY OF LYNCHBURG

AND Air Midwest

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THIS CONTRACT (hereinafter occasionally called Agreement), made and entered into on the _____, by and between the CITY OF LYNCHBURG, a municipal corporation of Virginia (hereinafter referred to as the City), party of the first part; and Air Midwest, a Kansas corporation, authorized to do business in the Commonwealth of Virginia (hereinafter referred to as Airline), party of the second part;

WITNESSETH:

WHEREAS, the City owns and operates a certain public facility known as the Lynchburg Regional Airport, located in Campbell County, Virginia, hereinafter called "Airport," together with certain structures and improvements thereon; and

WHEREAS, the Airline is engaged in the business of air transportation with respect to persons, property and/or cargo; and

WHEREAS, the Airline desires to use certain premises and facilities of said Airport, together with certain rights in connection therewith, in the conduct of its air transportation business; and

WHEREAS, the City is willing to permit the Airline to use certain premises and facilities upon the terms and conditions hereinafter stated,

NOW, THEREFORE, for and in consideration of the grant of the rights and the mutual covenants and agreements herein contained, the parties hereto mutually agree as follows, to-wit:

ARTICLE I. Premises

As duly authorized by competent governmental authority, Airline shall have the non-exclusive right to operate at the Airport a transportation system by aircraft for the carriage of persons, property and/or cargo, which right shall include the following:

A. Use of Airport and Facilities:

- (1) The use, in common with others authorized to do so, of the common areas of the Airport and appurtenances thereto, and any additions to the Airport which may be designated by City for common use, together with all facilities, equipment, improvements and services which have been or may hereafter be provided and maintained by City at or in connection with the Airport from time to time for common use.

- (2) The right to land, take off, taxi, tow, load and unload aircraft and other equipment used by Airline in its operation of an air transportation system, in such spaces as may be approved in writing by City under the provisions of Article V (Rules and Regulations) hereof.
- (3) The right to repair, maintain, condition, service or test aircraft or other equipment of Airline; provided such rights shall be exercised only in areas with such pertinent rules and regulations as approved in writing from time to time by City under the provisions of Article V hereof.
- (4) The right to train, subject to such rules and regulations as may be promulgated in writing under Article V hereof, at the Airport, personnel in the employ of or to be employed by Airline; it being understood that such training shall be incidental to the use of the Airport in the operation by Airline of its air transportation system.
- (5) The right to install, maintain and operate, at Airline's expense, by Airline alone, or in conjunction with any other air transportation companies who are lessees or permittees at the Airport, radio communications, meteorological and aerial navigation equipment and facilities in or on the premises, subject to the approval of City, which shall not be unreasonably withheld.
- (6) The right, directly, or through a contractor of the Airline's choice, to transport Airline's passengers, cargo and property including mail to and from and at the Airport by such vehicles as Airline, or Airline's contractor, may desire or require. City may require Airline's contractor to acquire an Airport permit and provide adequate proof of insurance. Nothing contained in the foregoing shall be deemed a grant of any franchise, consent, license, permit, right or privilege of any nature or kind whatsoever to operate omnibuses, taxicabs, or any other vehicle or conveyance carrying persons or property, whether the same be for hire or otherwise, at the Airport or over the public streets of the City of Lynchburg.
- (7) The right to install and operate, at Airline's expense, advertising sign or signs representing its business, the number, type, size, design and location of all such signs to be subject to the approval of the City, which shall not unreasonably be withheld.

- (8) The right to purchase its requirements of fuel, lubricating oils, materials and supplies from any company or person of its choice, provided that the Airline shall not engage in the sale of fuel, lubricants, materials and supplies to any other person, firm or corporation and provided, further, that the Airline shall not grant to any person, firm or corporation the right to service its aircraft with fuel, lubricants, greases, and like materials and supplies, without giving City the right to meet the terms offered by such other party.
- (9) The sale of air transportation tickets and services, the handling of reservations, the processing of passengers and their baggage for air travel, and the sale, handling, and providing of mail, freight and express services.
- (10) The installation of personal property, including furniture, furnishings, supplies, machinery and equipment in Airline's Exclusive Space and Shared Space as Airline may deem necessary or prudent for the operation of its air transportation business provided, however, that such installations in Shared Space shall be subject to the prior written approval of the City.
- (11) The rights and privileges granted to Airline herein may be exercised by and on behalf of Airline by other airlines signing agreements substantially similar to this Agreement or contractors of Airline authorized by the City to provide such services at the Airport subject to all laws, rules and regulations as may be applicable to the activities undertaken. Further, Airline may exercise on behalf of other airlines any of the rights granted Airline herein so long as Airline is exercising those same rights in the operation of Airline's own air transportation business at the Airport.

B. Common Areas in Certain Buildings:

The Airline shall have the further right to the use, together with others duly authorized, of the terminal curbside, passenger waiting areas, public corridors, public toilets and other public areas in the Terminal Building for Airline, its employees, passengers and invitees, subject to such rules as may be promulgated by City under Article V hereof.

C. Employee Parking:

The City reserves the right during the term of this Agreement to make a reasonable monthly charge for employee parking spaces.

ARTICLE II. Term

The term of this Agreement shall be on a month-to-month basis beginning on the _____ day of _____ 2002 and continuing until terminated provided herein.

ARTICLE III. Rentals and Fees

Airline agrees to pay City, at such places as City may designate, for the use of the premises, facilities and rights granted hereunder the following rentals and fees. The fees due under this Article III shall begin when the Airline initiates operation at the Airport.

A. Common Space Rentals and Other Fees:

Airline agrees to pay City the sums below toward the maintenance, operation, and (if applicable) other expenses incurred by City for common areas of the Terminal Building. These amounts shall be paid monthly at the rates detailed below during the term hereof. Each of the amounts below will be revised for each month of this agreement based upon the percentage of Total Passenger Volume using the Airport. Total Passenger Volume is hereby defined as the Airline's share of the total number of commercial enplaned and deplaned passengers at the Airport for which the billing is made. These areas utilized in common with others by the Airline are shown on the lease diagrams attached hereto and made a part hereof:

Terminal Space Rent - \$35.00 Per Square Foot Per Year

- Common Baggage Handling - Calculated based on Total Passenger Volume as a percent of 1,600 sq.ft.

Fixed Amount Fee

- Bag Belt Amount - Calculated based on Total Passenger Volume as a percent of \$23,334 fixed amount per annum

Maintenance Cost Charge - \$14.00 Per Square Foot Per Year

- Common Passenger Holdroom - Calculated based on Total Passenger Volume as a percent of 3,000 total sq.ft.
- Common Baggage Claim Area - Calculated based on Total Passenger Volume as a percent of 1,700 total sq.ft.

The bag belt system includes the two outbound belts and conveyors that collect luggage from behind the ticket counters and transport it down one story to the bag make-up area where they are loaded on carts. There is another baggage system which takes luggage from the airfield level up one story to the common baggage claim carousel. Airline baggage fees provide for the City's annual maintenance contract for upkeep and repair of the systems (excluding parts) and the capital cost of additional belts originally requested to be constructed by the airlines.

In addition to the above terminal charges, Airline agrees to pay any other fees, charges, or amounts as contained herein.

B. Landing Fees:

For the use of all other premises, facilities and rights granted to the Airline under this Agreement, specifically excluding those for which rentals or fees are provided in other sections of this Article, monthly landing fees during the term of this Agreement shall be paid by the Airline to the City as hereinafter described. For each 1,000 pounds of aircraft weight, based on the maximum certificated landing weight as operated by Airline and approved by the Federal Aviation Administration for landing such aircraft at the Airport, the rate shall be as follows: \$1.15, which rate shall be applicable to all of Airline's Revenue Flights, both scheduled and chartered. The term Revenue Flight(s) shall mean an aircraft landing at the Airport relating to a flight from which the Airline derives revenues for the air transportation of passengers, property and/or mail. But shall not include any landing of an aircraft which after having taken off from the Airport, and without making a landing at another airport shall return to land at the Airport because of meteorological, mechanical or operating causes, or any other reason of emergency or precaution.

It shall be the duty of the Airline to furnish to the City the maximum certificated landing weight for its various types of aircraft, and the number of its planes actually landing in revenue service at the Airport during each month, within five business days following the month for which billings are to be made.

C. Prompt Payment Required:

If any payment of the fees by the Airline due under ARTICLE III shall not be paid within ten (10) days of the due date, which is 30 days from date of invoice, interest shall accrue at a rate equal to one and one-half percent (1.5%) per month. Such interest shall begin on the day following the due date for such fees and all interest shall be calculated on a 365-day year. In the event it becomes necessary for the City to institute legal proceedings to collect any of the fees payable under this Agreement, the Airline agrees to pay all reasonable and necessary expenses incurred by the City in such legal proceedings,

including reasonable attorney's fees. Further, the failure of the Airline to timely pay the fees payable under this Agreement is grounds for termination of the Agreement in accordance with the provision of "ARTICLE VII - CANCELLATION BY CITY" hereof.

The rentals and fees set out hereinabove in Sections A and B of this Article shall be billed to the Airline monthly on or before the 10th day of each calendar month next succeeding that for which billing is made.

ARTICLE IV. Maintenance

A. Maintenance by City:

- (1) Airline has examined the landing field, runways, aprons and other premises and has accepted them as being in good order and satisfactory condition and as adequate for the purposes of the Airline. City agrees that it will maintain them in substantially as good order and condition as they are at the present time. City agrees, except as herein otherwise provided, that it will, for the term of this Agreement, use reasonable care to maintain the Airport and facilities provided by City in a suitable and safe condition for the taking off and landing of Airline's aircraft of such size and design as the Federal Aviation Administration (FAA), or other competent governmental authority, will permit to land and take off from said airfield.
- (2) City agrees, except as herein otherwise provided, that it will, for the term of this Agreement, use reasonable care to maintain the public areas and the Common Areas of the Terminal Building. Common Areas defined as the passenger holdroom, baggage claim area and baggage handling area. Exceptions are areas within the Common Areas designated for an Airline's exclusive use.
- (3) It is understood that City's duty hereunder is limited to the maintenance of the existing Airport and the existing facilities provided by City, and that, while it is the right of the City to enlarge or improve the Airport and facilities, there shall be no duty or obligation upon City to do so under the terms of this Agreement.

B. Maintenance by Airline:

- (1) Airline shall repair all damages to said premises caused by its agents, employees, guests and patrons.
- (2) All repairs, alterations, and/or improvements must comply with State and local ordinances. Any and all alterations and improvements must be approved in advance by the City, which approval shall not be reasonably withheld. Should Airline fail to keep the premises in good order and repair, as is reasonably required in order to preserve the general appearance and value of the City's remaining premises in the immediate vicinity thereof, and if such maintenance and repair is not undertaken within thirty (30) days after receipt of written notice, the City shall have the right to perform the repairs, and the cost of such repairs shall be reimbursed to the City by the Airline.
- (3) City will provide dumpster and Airline agrees to remove at Airline's expense all trash and garbage from its operations at the premises to the dumpster provided by the City.
- (4) Airline shall provide its own janitorial service or pay a fee to the Airport each month for such service within any area used exclusively by Airline.
- (5) The Airline agrees that there will be no exterior storage of equipment, materials or supplies outside of area leased exclusively to Airline except that with the written permission of City, Airline can stage deicing and ground support equipment on the edge of the aircraft parking apron in specified areas; however, no inoperative or broken equipment can be stored nor can empty drums, pallets, or other items be left in the public area.

ARTICLE V. Rules and Regulations

Airline covenants and agrees to observe all reasonable rules and regulations promulgated in writing from time to time by City covering the conduct on and operation at the Airport and the use of its facilities, except that City agrees that any rules and regulations so promulgated shall not be inconsistent with any legally authorized rule or regulation of the Federal Government, Commonwealth of Virginia, or City of Lynchburg, which is binding in law on City. Airline, at the convenience of the Airline, hereby specifically agrees to provide information on or actual training on the type of aircraft used at the Airport to Airport Rescue and Firefighter personnel of the City. City acknowledges that Airline is not an approved instructor in ARFF procedures and such training is for the information of City's employees relative to Airline's aircraft.

ARTICLE VI. Damage or Destruction of Premises

If any building of City in which the Airline occupies space hereunder shall be partially damaged by fire, the elements, or the public enemy, so as to affect Airline's use of the space therein, but not render it untenable, the same shall be repaired with due diligence by City at its own cost or expense. If the damage shall be so extensive as to render untenable Airline's space in said building, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City at its own cost and expense, and the use fees payable hereunder with respect to Airline's space in such building shall be proportionately paid up to the time of such damage and shall thenceforth cease until such time as such building shall be fully restored. In any case where such building is completely destroyed by fire, the elements, the public enemy, or other casualties, or so damaged that it will or does remain untenable for more than thirty (30) days, then, at the option of the City, either (1) City shall repair and reconstruct said buildings with due diligence at its own cost and expense and the rent payable hereunder with respect to Airline's space in said building shall be proportionately paid up to the time of such damage or destruction and shall thenceforth cease until such time as said building shall be fully restored, or (2) the City shall notify Airline within sixty (60) days of the time of such damage or destruction that City does not propose to restore the building, in which case City may give notice of its intention to cancel this Agreement in its entirety or to cancel without any further liability of the City, as of the date of such damage or destruction, such part of this Agreement as relates only to said building; provided, however, that nothing in this Article shall apply to damages to buildings caused solely by the willful, or negligent, acts of the Airline, its employees or agents, and further provided that Airline shall, at its own cost and expense, repair all such damages resulting from such acts.

ARTICLE VII. Cancellation by City

City may cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement, by giving Airline thirty (30) days' advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- (a) The filing by Airline of a voluntary petition in bankruptcy;
- (b) The institution of proceedings in bankruptcy against Airline and the adjudication of Airline as a bankrupt pursuant to such proceedings;
- (c) The taking by a court of jurisdiction of Airline and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;

- (d) The appointment of a receiver of Airline's assets;
- (e) The divestiture of Airline's estate herein by other operation of law;
- (f) The voluntary abandonment by Airline of its conduct of air transportation at the Airport for a period of thirty (30) days;
- (g) The default by Airline in the performance or non-performance of any covenant or agreement herein required to be performed by or required not to be performed by Airline and the failure of Airline to remedy such default for a period of thirty (30) days after receipt from City of written notice to remedy same; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if Airline shall have remedied the default prior to the receipt, in accordance with the provision of Article XIV herein, of City's notice of cancellation;
- (h) The assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as substantially to restrict Airline, for a period of at least ninety (90) days, from operating an air transportation system;
- (i) Any assignment made by Airline for the benefit of its creditors;
- (j) City may cancel this Agreement in its entirety without prior notice if Airline shall fail to maintain all the insurance provision requirements as stated in Article XVII.

Notwithstanding anything to the contrary herein contained, City shall not have the right to cancel, or give notice of cancellation of, this Agreement solely by reason of Airline's failure or refusal to pay all or any part of the rentals, fees or charges provided for in this Agreement, if, within thirty (30) days after such failure or refusal, Airline shall have given to City a written notice stating that Airline, in good faith, predicates such failure or refusal upon any provision of this Agreement granting to Airline, in specified events, a reduction in, or abatement of any rentals, fees or charges payable by Airline to City hereunder.

No waiver or default by City of any of the terms, covenants or conditions hereof to be performed, kept and observed by Airline shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Airline. The acceptance of rental or the performance of all or any part of this Agreement by City for or during any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Airline, shall not be deemed a waiver of any right on the part of City to cancel this Agreement for failure by Airline to so perform, keep or observe any of the terms, covenants, or conditions hereof to be performed, kept and observed.

ARTICLE VIII. Cancellation by Airline

Airline may cancel this Agreement and terminate all or any of its obligations hereunder at any time that Airline is not in default in the payment of any rentals, fees or charges to City hereunder by giving City thirty (30) days' advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- (a) The failure or refusal of the FAA at any time during the term of this Agreement to permit Airline to operate into or from the Airport with any type of aircraft licensed to operate into or from other airports of like size and character; provided, however, that such failure or refusal is not due to any fault of Airline;
- (b) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to substantially affect Airline's use of the Airport in its conduct of an air transportation system at the Airport, and the remaining in force of such injunction for a period of at least thirty (30) days;
- (c) The inability of the Airline to use the Airport for a period in excess of thirty (30) days, because of the issuance of any order, rule or regulation of the FAA, or other competent governmental authority, preventing Airline from operating into and from the Airport; provided, however, that such inability or such order, rule or regulation is not due to any fault of Airline;
- (d) The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy or take an action to remedy such default for a period of thirty (30) days after receipt from Airline of written notice to remedy the same; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if City shall have taken action to remedy the default prior to receipt of Airline's notice of cancellation;
- (e) The assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as substantially to restrict Airline, for a period of at least thirty (30) days from operating an air transportation system.

Airline's performance of all or any part of this Agreement for or during any period or periods after a default in any of the terms, covenants and conditions herein contained to be performed, kept and observed by City, shall not be deemed a waiver of any right on the part of the Airline to cancel this Agreement for failure by City so to perform, keep or observe any of the terms, covenants or

conditions hereof to be performed, kept and observed. No waiver of default by Airline of any of the terms, covenants or conditions hereof to be performed, kept and observed by City shall be construed to

be or act as a waiver by Airline of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by City.

Airline may terminate without cause with 180 days written notice to City.

ARTICLE IX. Subordination/Non-Discrimination

It is agreed between the parties hereto that this Agreement is subordinate to any lease or agreement between the City and the United States Government, or any agency or department thereof, for the use of the Airport.

In the exercise of the privileges and the use of the facilities granted said Airline hereunder and in the performance of its duties and obligations set out herein, Airline, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that (1) no person on the grounds of race, color, creed, sex, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the exercise of the privileges and the use of the facilities granted said Airline hereunder and in the performance of its duties and obligations set out herein, the Airline covenants and agrees that the Airline and its representatives will not discriminate against and will make reasonable efforts to accommodate persons with disabilities as required by the Americans with Disabilities Act.

ARTICLE X. Indemnity

The Airline, under the terms of this Agreement, will not be in control or possession of said Airport (except as to the parts thereof leased exclusively to Airline), and Airline does not assume responsibility for the conduct or operation of the said Airport or for the physical or other condition of the same. However, it is expressly understood and agreed by and between the parties hereto that the Airline is and shall be an independent contractor and operator, responsible to all parties for all of its acts or omissions, and the City shall in no way be responsible therefor. It is further agreed that in its use and enjoyment of the airfield, premises and facilities herein referred to, the Airline will indemnify and save harmless and provide a defense for the City and its employee's from any and all claims or losses that may result to the City from any negligent or wrongful acts or omissions on the part of the Airline, its duly authorized agents or representatives, and shall in all ways defend and hold the City, its officers and employees harmless from damage or loss, or action in respect thereof, and shall pay all costs and expenses of defending such claims or actions including reasonable attorney's fees, unless such claims or losses are caused by the negligence of the City, its officers or employees, and an opportunity reasonably to investigate and defend any claim or action based upon alleged negligent or wrongful conduct of the Airline or its duly authorized agents or representatives shall be granted to City.

ARTICLE XI. Surrender of Possession

Upon the expiration or other termination of this Agreement, Airline's authority to use the premises, rights and facilities herein granted shall cease, and Airline shall, upon such expiration or termination, promptly and in good condition, ordinary wear and tear excepted, surrender the same to City.

Except as otherwise provided in this Article, all fixtures, improvements, equipment, and other property bought, installed, erected or placed by Airline in, on or about the Airport shall be deemed to be personal and shall remain the property of the Airline, and Airline shall have the right, at any time during the term of this Agreement and for a period of sixty (60) days after the expiration or other termination hereof, to remove any or all of its property from the Airport; provided Airline is not in default in its payments to City hereunder, and subject further to Airline's obligation to repair all damage, if any, resulting from such removal and to restore the premises to its original condition. Any and all property not removed by Airline within ninety (90) days subsequent to the expiration or other termination of this Agreement shall thereupon become a part of the land on which it is located and title thereto shall thereupon vest in City.

ARTICLE XII. Inspection by City

City may enter upon the premises hereunder at any reasonable time for any purpose necessary, incidental to or connected with the performance of its obligation hereunder, or in the exercise of its governmental functions. Provided, however, other than in case of emergency, City shall give Airline reasonable advance written notice of intent to exercise this right.

ARTICLE XIII. Assignment and Subletting

Airline shall not at any time assign this Agreement or any part thereof without the consent in writing of City which should not be unreasonably withheld; provided, however, that without such consent Airline may assign this agreement to any corporation with which the Airline may merge or consolidate or which may succeed to the business of the Airline. Airline shall not at any time sub-let any of the space leased exclusively to the Airline (if any) without the prior written consent of City, such consent not to be unreasonably withheld. Under no circumstances shall Airline be relieved of any of its obligations hereunder by any such sub-letting.

ARTICLE XIV. Notices

Notices to Airline provided for herein shall be sufficient if sent by registered mail, postage prepaid, or by telephonic facsimile machine addressed to Air Midwest, 2203 Air Cargo Road, Wichita, Kansas 67209, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

ARTICLE XV. Defining "FAA"

Whenever the terms "Federal Aviation Administration" or "FAA" are used in this Agreement, they shall be construed as referring not only to the Federal Aviation Administration or Department of Transportation, but also to such other appropriate Federal governmental agency which may be the successor or successors thereof.

ARTICLE XVI. Utilities

The City shall furnish adequate electricity for lighting, computers, communication, basic aircraft ground power, water, heat and air conditioning in and for the passenger holdroom in the Terminal Building, and

the Airline shall have the right and privilege of installing its own equipment other than ordinary lighting and office equipment at its own expense in its exclusive space, subject to City's approval, which should not be unreasonably withheld, provided Airline shall pay the charges for the additional electricity.

ARTICLE XVII. Insurance

Airline shall furnish City a certificate or certificates of public liability, passenger liability, and property damage insurance carried by it, the liability coverage shall be in at least the minimum amounts of \$50,000,000.00 and shall name the City, its employees and officers, as an additional insured, covering the Airline's activities at the Airport, which said certificate or certificates shall contain provisions that, in case of cancellation of any such insurance, City shall be given thirty (30) days' prior notice of such cancellation. It is agreed that any insurance maintained by City shall apply in excess of and shall not contribute with insurance provided under this Agreement. In addition, Airline is solely responsible to provide insurance for its personal property and equipment located at the Airport.

ARTICLE XVIII. General Provisions

- A. The Airline expressly agrees for itself, its successors and assigns to prevent any use of the hereinabove described property which would interfere with or adversely affect the operation or maintenance of the Lynchburg Regional Airport, or otherwise constitute an airport hazard.
- B. It is understood and agreed that major Airport repairs or rebuilding may take place during the term of this Agreement and the Airline accepts this Agreement subject to any reasonable inconvenience or loss of use of said premises or any part thereof which may become necessary because of said Airport repairs, construction or expansion.
- C. Marginal headings contained in this Agreement are for convenience only and shall not be considered to amplify, relate, modify, or otherwise affect any of the terms, provisions or conditions of this lease.
- D. In the event that any provision of this Agreement shall be construed to be invalid or unenforceable, then the remaining portions shall remain in full force and effect.
- E. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.

- F. City will remove snow and ice in accordance with its Snow Removal Plan. It is expressly understood that there shall be no other duty upon the City under this Agreement to remove snow or ice from the demised premises.
- G. City shall not be liable for any loss of revenue to Airline resulting from City's acts, omissions, or neglect in the maintenance and operation of the Airport and its facilities.
- H. All terms and conditions with respect to this Agreement are expressly contained herein, and both parties agree that no representative or agent of City or Airline has made any representation or promise with respect to this Agreement not expressly contained herein.
- I. Airline agrees to keep accurate books, ledgers, accounts or other records reflecting its business activity, namely, aircraft operations and passenger activity at the Airport, and Airline agrees that representatives of the City shall have the right to audit and examine such books, accounts or other records during normal business hours upon reasonable advance notice. The total cost of such audit or review shall be borne by City.
- J. It is understood that this Agreement is made subject to its approval by the City Council of Lynchburg, Federal Aviation Administration and the Virginia Department of Aviation if any such approval is needed.
- K. It is distinctly understood that all privileges and uses at said Airport, except to the extent herein granted to the Airline, are expressly reserved by the City to grant or use in its discretion as the City may deem advisable. No exclusive rights are granted by this Agreement to Airline.
- L. The rates, terms and conditions provided Airline under this Agreement are no less favorable than those City is providing to other airlines in the business of air transportation. If City in the future offers to any other airline in the business of air transportation any rates, terms, and conditions more favorable than those offered to Airline, City promptly will notify Airline in writing and offer to Airline the more favorable rates, terms, and conditions.
- M. Airline shall not be liable for any failure to perform under this Agreement if such failure is due to causes beyond its control, including, but not limited to, act of God, or the public enemy, fire, floods, epidemics, quarantine, or strikes.

N. The Airline shall comply with all federal, state, and local laws and ordinances, governmental rules, regulations and orders applicable to the operations of the Airport or to the Airline's activities at the Airport.

The Airline shall, for the City's information, deliver to the City promptly, a true copy of any notice, warning, summons, or other legal process for the enforcement of any such laws, ordinances, rules, regulations or orders. The Airline shall indemnify and hold the City harmless from and against any and all claims, actions, damages, liabilities, fines, penalties, costs and expenses suffered or incurred by the City or by the Airline as a result of the Airline's noncompliance with applicable laws, ordinances, resolution or regulations. The Airline shall have such time within which to comply with the aforementioned laws, ordinances, rules and regulations as the authorities enforcing the same shall allow.

ARTICLE XIX. Passenger Facility Charge (PFC)

Nothing contained herein shall prevent the City from imposing a Passenger Facility Charge as approved by the proper governmental authority under FAR 158.

In addition to any other space or use charges that may apply, City specifically reserves the right to charge for actual costs associated with a handicap lift device procured by the City and made available to all carriers to transport certain passengers on or off aircraft.

IN TESTIMONY WHEREOF, the City of Lynchburg has caused its name to be hereunto subscribed by L. Kimball Payne, III, its City Manager, with its corporate seal hereunto duly affixed and attested by Pat Kost, its Clerk of Council, pursuant to a resolution heretofore duly adopted by the Council of the City of Lynchburg; and Air Midwest, has caused its name to be hereunto subscribed by Greg Stephens, its President, with its corporate seal hereunto duly affixed and attested by _____, its _____.

CITY OF LYNCHBURG, City

By: _____
City Manager

(SEAL)

ATTEST:

Clerk of Council

Airline: Air Midwest

By: _____
Greg Stephens
Title: _____
President

(SEAL)

ATTEST:
